IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2990 of 2000
to
FIRST APPEALNo 2992 of 2000
with
Civil Application Nos.1336 to 1338 of 2002.

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ORIENTAL INSURANCE CO LTD

Versus

MINOR SHARUKH HUSAIN SABIR HUSAIN,THRO'SABIRKHAN M SHAIKH

Appearance:
MR AJAY MEHTA FOR MR RAJNI H MEHTA for appellant
MR BJ GANI for Respondents No. 1

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 20/02/2002

COMMON ORAL JUDGEMENT

1. Admitted.

2. Mr. B.G. Jani, learned advocate appears and waives the service of notice of admission on behalf of respondent No.1 in all appeals/claimants. Since the point involved in all these appeals is relating to liability of appellant/insurance company with regard to payment of compensation payable under Section 140 of the Motor Vehicles Act, 1988 ('the Act' for short) to respondent No.1/claimants, rest of the respondents who are driver and owners not being necessary parties are not served with the notice of admission.

3. In view of the peculiar facts and circumstances and since the question involved in these appeals run into narrow compass, with the consent of the learned advocates appearing for the parties, the appeals are taken up for final hearing today and decided by this common judgment.

4. As common question of law and facts are involved in these appeals, I propose to dispose of them by this common judgment.

5. In these appeals filed under Section 173 of the Act, appellant - The Oriental Insurance Company Limited seeks to challenge the order dated March 29, 2000 recorded below Exs.13 and 17 in MACP Nos.322, 325 and 326 of 1995 by the Motor Accident Claims Tribunal (Aux.)., City Civil Court, Ahmedabad by which the appellant is directed to pay to respondent No.1 in appeals/claimants in claim petitions a sum of Rs.25,000/- together with interest at the rate of 15% per annum from the date of filing of the main applications till the realization and if the amount is paid within a period of two months excluding the period taken for obtaining the certified copy, interest shall be calculated at the rate of 12% per annum, jointly and severally with respondent Nos.2, 3 and 4 by way of compensation under no fault liability principle envisaged under section 140 of the Act.

6. Respondent No.1 in all the appeals are the claimants before the Tribunal in the petitions which are filed under Section 166 of the Act claiming compensation as they have received vehicular injuries of fracture resulting into permanent disablement in an accident which has taken place on March 14, 1994 at about 5 P.M. while they were travelling in rickshaw bearing registration No.GJ-1-T-3915 from Delhi Chakla to R.C. High School which has collided with an oncoming jeep car bearing registration No.GJM 7881. In the said petitions claimants have also filed applications under Section 140 of the Act to recover interim compensation of RS.12,000/together with interest and cost.

7. The Tribunal considering the FIR, injury certificate and insurance policy of the rickshaw involved in the accident held that the claimants are entitled to interim compensation of Rs.25,000/- as envisaged under Section 140 of the Act as the provisions of Amendment Act No.54 of 1994 though came into effect from November 14, 1994 are having retrospective effect and accordingly awarded the amount of Rs.25,000/- together with interest to the claimants which has given rise to the present appeals.

8. I have heard Mr. Ajay Mehta, learned advocate for the appellants in all appeals and Mr. B.G. Jani, learned advocate for respondent No.1 in appeals/claimants. I have also perused the averments made in the memo of appeals, grounds set out therein, the impugned orders, copies of the documents supplied by Mr. Mehta during the course of his submissions and the relevant provisions of the Act.

9. The sole question which is called for determination in these appeals is as to whether the Amendment Act No.54 of 1994 which came into operation on November 14, 1994 can be retrospectively applicable to the facts of the case when the alleged accident has taken place on March 14, 1994, i.e., prior to coming into operation of the new Amendment Act.

10. At the outset it may be appreciated that the provisions contained in Section 140 of the Act is a benevolent piece of legislation and for the first time it came to be introduced in the year 1982 by inserting Section 92A in the Motor Vehicles Act, 1939 and at the relevant time a person who suffered injury was entitled to receive Rs.7500/- and the heirs and legal representatives of a person who died in the accident were entitled to receive Rs.12,000/- by way of interim compensation. The said Section was amended vide Amendment Act No.59 of 1988 which came into being on July 1, 1989 by virtue of which a person who received injury was entitled to receive Rs.12,000/- whereas the heirs and legal representatives of a person who died in the accident were entitled to receive Rs.25,000 by way of interim compensation. The said provision again came to be amended vide Amendment Act No.54 of 1994 which came into being on November 14, 1993 and as per the said amendment, a person who received vehicular accidental injury is entitled to receive Rs.25,000 whereas the heirs and legal representatives of a person who died in the accident are entitled to receive Rs.50,000 by way of

interim compensation. Admittedly, the accident in question has taken place on March 14, 1994 whereas the Amendment Act No.54 of 1994 came into being on November 14, 1994 and therefore obviously respondent No.1 in all the appeals/claimants are entitled to receive interim compensation as per the amended provisions of Amendment Act No.59 of 1988 which came into being on July 1, 1989 and as per the said provisions a person who received vehicular accidental injury is entitled to receive Rs.12000 by way of interim compensation and therefore respondent No.1 in all the appeals/claimants are entitled to receive Rs.12,000 by way of interim compensation and not Rs.25,000. The Tribunal has therefore obviously fell in error by holding that the Amendment Act No.54 of 1994 operates retrospectively. It is settled principle of law that substantive law never operates retrospectively unless specifically provided in the Amendment Act.

11. In view of the aforesaid state of affairs, I am of the opinion that the Tribunal has committed grave error in granting interim compensation of Rs.25,000/- to respondent No.1 in all appeals/claimants who received injuries in an accident which has taken place before November 14, 1994 and therefore the impugned orders are required to be modified by allowing these appeals.

12. For the foregoing reasons, all the appeals succeed and accordingly they are allowed with no order as to costs. The impugned orders awarding compensation of Rs.25,000/together with interest and cost is modified and it is accordingly held that respondent No.1 in all these appeals/claimants are entitled to receive Rs.12,000 together with interest at the rate of 12% from the date of filing of the applications till the amount is paid. The amount deposited in the appeals, if any, with the Registry is directed to be transmitted to the Tribunal forthwith.

13. Since all the appeals are allowed, Civil Applications filed for stay do not assume any survival value an hence they are disposed of accordingly with no order as to costs.

(A.M. Kapadia, J.)

(karan)